

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**GERALD TOMLIN ASID, INC.
D/B/A TOMLIN ANTIQUES,**

Plaintiff,

V.

**BERKLEY REGIONAL INSURANCE
COMPANY,**

Defendant.

[illegible]

CASE NO. _____

DEFENDANT'S NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant, BERKLEY REGIONAL INSURANCE COMPANY (“BERKLEY”), hereby removes the action pending in the 298th Judicial District Court for Dallas County, Texas, to the United States District Court for the Northern District of Texas, Dallas Division, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, and sets forth in support of its Notice of Removal the following:

I. FACTUAL BACKGROUND FOR REMOVAL

1. Plaintiff Gerald Tomlin ASID, Inc. d/b/a Tomlin Antiques, (“TOMLIN”) commenced this action on July 19, 2016, by filing a Petition under the caption of *Gerald Tomlin Asid, Inc. d/b/a Tomlin Antiques v. Berkley Regional Insurance Company*, Cause No. DC-16-08651. Plaintiff seeks damages in excess of \$200,000.00 but not more than \$1 million relating to the denial of insurance coverage by BERKLEY for alleged storm-related damage to certain commercial premises that is averred to have occurred in June 2015. Plaintiff asserts causes of

action for breach of contract, violations of the Texas Insurance Code, and breach of the common law duty of good faith and fair dealing. TOMLIN also seeks a jury trial. A true and correct copy of the state court's electronic docket sheet for this action is attached hereto as **EXHIBIT A** to the attached Index of Documents as required under Local Rule 81.1(a)(4)(A).

2. Plaintiff's Original Petition and Citation were served on Defendant by certified mail received on August 29, 2016. A true and correct copy of the Citation, along with the Return of Service, is attached hereto as **EXHIBIT B** and a true and correct copy of the Petition is attached as **EXHIBIT C**.

3. Defendant filed its Original Answer and Counterclaim in the state court proceeding on September 19, 2016, a true and correct copy of which is attached hereto as **EXHIBIT D**.

4. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders received by Defendant in the state court action are attached hereto.

5. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) in that it has been filed by Defendant within thirty (30) days after the receipt by Defendant of a copy of the initial pleading setting forth the claims for relief on which Plaintiff's action is based. Because this action names only one defendant, by definition all defendants who have been properly joined and served consent to the removal of this case to federal court. 28 U.S.C. § 1446(b)(2)(A)

II.

BASIS FOR FEDERAL DIVERSITY JURISDICTION

1. This is an action of a civil nature in which the District Courts of the United States have been given original jurisdiction in that it involves an action in which there is complete

diversity of the parties within the meaning of 28 U.S.C. § 1332(a) and the amount in controversy exceeds \$75,000.00, excluding interest and costs.

2. Plaintiff, TOMLIN, is a citizen only of the state of Texas as it is incorporated here and has its principal place of business in this state. Defendant, BERKLEY, is a citizen of the state of Delaware, where it is incorporated, as well as Iowa, where it maintains its principal place of business, and is not a citizen of Texas.

3. Plaintiff expressly seeks in its Petition monetary relief of over \$200,000.00 and hence admits that the amount in controversy is greater than the sum or value of \$75,000.00, exclusive of interest and costs.

III.
REMOVAL TO THIS JURISDICTION AND VENUE IS PROPER

1. Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, removal of this action from the 298th Judicial District Court of Dallas County, Texas, to this Court is appropriate.

2. The removal of this action to this Court is proper under 28 U.S.C. § 1441(a) inasmuch as the District Court of Dallas County, Texas, where this action was originally filed and is pending, is located within this judicial district and venue is hence proper.

3. Defendant respectfully requests that this Court assume jurisdiction over this matter and issue such orders and processes as may be necessary to bring before it all the parties necessary for the trial hereof.

4. The undersigned counsel for the Defendant certifies that they will file a true and correct copy of this Notice of Removal with the Clerk of the 298th Judicial District Court of Dallas County, Texas, as required by 28 U.S.C. § 1446(d), and give notice of same to Plaintiff.

IV.
PRAYER

WHEREFORE, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant files this Notice of Removal with the United States District Court for the Northern District of Texas, Dallas Division, and hereby seeks to remove this action from the 298th Judicial District Court of Dallas County, Texas, to this Court.

Respectfully submitted,

GORDON & REES LLP

By: /s/ Robert A. Bragalone

ROBERT A. BRAGALONE

State Bar No. 02855850

bbragalone@gordonrees.com

JOHN MITCHELL NEVINS

State Bar No. 14935800

jnevins@gordonrees.com

2100 Ross Avenue, Suite 2800

Dallas, TX 75201

(214) 231-4660 (Telephone)

(214) 461-4053 (Facsimile)

**ATTORNEYS FOR DEFENDANT
BERKLEY REGIONAL INSURANCE
COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that Plaintiff's counsel of record, Scott G. Hunziker, to the extent deemed to have consented to electronic service or is a registered user thereof, is being served September 28, 2016, with a copy of this document via the Court's CM/ECF system per Local Rule 5.1(d). Otherwise, he will be served by electronic mail, facsimile transmission and/or first class mail on this same date at the following address:

Scott G. Hunziker
The Voss Law Firm, P.C.
26619 Interstate 45 South
The Woodlands, TX 77380
scott@vosslawfirm.com
fax: 713-861-0021

/s/ John Mitchell Nevins

John Mitchell Nevins